IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4389 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M/S PATEL AND COMPANY THROUGH PARTNER

Versus

STATE OF GUJARAT 3RD SPECIAL LAND ACQUISITION

Appearance:

MR AJAY R MEHTA for Petitioner

MR KT DAVE, AGP for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/07/2000

ORAL JUDGEMENT

In this petition, the petitioner-firm running a petrol pump at Petlad road has challenged the decision of the respondents in suspending the petitioner's licence under the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order 1981 on the ground that the petrol pump was being run unauthorisedly by Ramanbhai M. Patel. The respondent has also issued a show cause

notice for cancelling the licence on the same ground. Hence, that is also under challenge.

2. The Indian Oil Corporation had given dealership for the petrol pump to M/s Patel & Company whose partners were Patel Shantibhai Aashabhai, Patel Shantibhai Parshottambhai and Patel Chimanbhai Aashabhai (since deceased on 3.12.1983). Subsequently, the petitioner-firm moved an application before the Indian Oil Corporation for reconstituting the partnership firm in which it was stated that the business of the partnership firm was to be carried out only by two partners viz. Dahyabhai S Patel and Ramanbhai Mahjibhai Patel with their holding of 51% and 49% respectively. The permission of the Indian Oil Corporation was sought and on 12.9.1999 the Indian Oil Corporation conveyed the approval in principle for the proposed reconstitution. The reconstitution was approved with effect from 6.9.1999. This is clear from the Indian Oil Corporation's letter dated 12.9.1999 at Annexure "B" to the petition. However, the Indian Oil Corporation asked for certain documents as per the particulars given in the said letter dated 12.9.1999. The petitioner-firm submitted all the requisite documents including the partnership deed for reconstituting the firm and the petitioner-firm submitted those documents to the Indian Oil Corporation on 24.9.1999 as per the letter at Annexure "D". It appears that the matter was thereafter in correspondence with the Indian Oil Corporation and ultimately vide letter dated 24.3.2000, the Indian Oil Corporation granted the approval for reconstitution of the retail outlet dealership as per letter at Annexure "K" (Page 96). On the basis thereof, a fresh dealership agreement was also executed between the petitioner-firm and the Indian Oil Corporation for a period of five years with effect from 6.9.1999 (Annexure "L" Page 97).

3. In the meantime, on 1.3.2000 the officers of the Civil Supplies Department of the State Government had inspected the petrol pump and they raised an objection that the petrol pump was being run by Ramanbhai M. Patel who had no business to run the petrol pump as he was not authorized by the Indian Oil Corporation to run the petrol pump. On that ground, the petitioner's licence was suspended vide order dated 15.3.2000 (Annexure "G"). The petitioner has challenged the said order of suspension. The petitioner's appeal against the said order has been dismissed by the Director of Civil Supplies vide order dated 20.4.2000 (Annexure "I").

It is against the aforesaid orders that the petitioner has filed the present petition. During pendency of this petition after hearing the learned counsel for the parties, this Court had granted ad-interim relief on 22.5.2000 staying operation of the order dated 15.3.2000 suspending the licence.

4. The State Government has also issued a show cause notice dated 3.4.2000 for calling upon the petitioner to show cause why the petitioner's licence should not be cancelled on the same ground on which the licence is suspended. Hence, the show cause notice is also challenged.

5. Affidavit in reply dated 23.5.2000 has been filed by the Deputy Director, Civil Supplies Department contending that the suspension order was rightly passed as on the date of inspection, Ramanbhai M. Patel had no authority to run the petrol pump. It is further submitted that when the petrol pump was shifted from Palaj to Petlad-Khambhat Road, the proceeding for shifting the petrol pump was effected through one Ghanshyambhai Shantibhai, son of Shantibhai Aashabhai Patel, though he was not a partner of Patel & Company. The deponent admits that by letter dated 12.9.1999, the Indian Oil Corporation has accepted the proposal for reconstitution of the partnership firm in which Ramanbhai M Patel was also the partner subject to certain conditions, but thereafter the final approval from the Company was not produced before the officers. It is also further stated that the petitioner-firm had moved an application to the Mamlatdar on 14.10.1999 for the purpose of showing recognition of the firm, but the Competent Authority has not granted that application.

6. At the hearing of this petition, Mr Ajay R Mehta, learned counsel for the petitioner has pointed out from various documents including the letter dated 12.9.1999 (Annexure "B"), the petitioner-firm's letter dated 14.10.1999 (Annexure "E") and also the Indian Oil Corporation's communication dated 24.3.2000 (Annexure "K") that Ramanbhai M Patel has become the partner of the petitioner-firm and that the reconstituted firm has been granted dealership with effect from 6.9.1999. Hence, there is no ground whatsoever for suspending the petitioner's licence or authorization nor can there be any ground for cancelling the licence, when the foundation for the allegation does not survive.

7. On the other hand, Mr KT Dave, learned AGP submits that against the order of suspension as confirmed

by the Deputy Director of Civil Supplies Department, revision lies before the State Government and that the aforesaid show cause notice for cancellation of licence is issued, but since no final order is passed, this Court may not interfere with the show cause notice.

8. Having heard the learned counsel for the parties, it appears to the Court that Ramanbhai Patel is already a partner of the petitioner-firm since 6.9.1999 and the Indian Oil Corporation had approved in principle the reconstitution of the firm with effect from 6.9.1999 as per their letter dated 12.9.1999, subject to the production of certain documents and when all the conditions were complied with, the Indian Oil Corporation has granted the final approval by their letter dated 24.3.2000 and on 15.6.2000, dealership agreement has also been executed with effect from 6.9.1999. In view of the fact that the petitioner-firm was reconstituted with effect from 6.9.1999 and the Indian Oil Corporation had already granted the approval therefor as per letter dated 24.3.2000 (Annexure "K"), the respondent authorities cannot be permitted to suspend the petitioner's licence or even to take any action for cancellation of the licence. The petitioner firm had also informed the Collector well in time on 14.10.1999 about the reconstitution of the firm and the approval in principle granted by the Indian Oil Corporation vide letter dated 12.9.1999. The approval in principle was granted in September, 1999 and the final approval was awaited from the Indian Oil Corporation on 1.3.2000 when the officers of the Civil Supplies Department inspected the petrol pump. Hence, the respondents can not be permitted to continue with the proceedings for suspension of licence or for cancellation of licence which proceedings are being continued by State Government Officers only on the basis that Ramanbhai M Patel did not have any authority to run the pump on 1.3.2000 when the inspection was carried out, which assumption no longer holds good.

9. In view of the above discussion, the petition is allowed. The impugned order dated 15.3.2000 (Annexure "G") passed by the Civil Supply Officer as confirmed by the order dated 20.4.2000 (Annexure "I") passed by the Director of Civil Supplies Department are hereby quashed and set aside. So also the show cause notice dated 3.4.2000 calling upon the petitioner to show cause against proposed cancellation of licence on the same ground on which suspension order dated 15.3.2000 (Annexure "G") was passed, is also quashed and set aside.

10. Rule is made absolute to the aforesaid extent.

There shall be no order as to costs.

July 11, 2000 (M.S. Shah, J.)

sundar/-